BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC

In the matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

To: The Commission, *en banc*

AMERICAN ASSOCIATION OF PAGING CARRIERS REPLY TO
COMMENTS ON SPRINT PETITION FOR DECLARATORY RULING

AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its reply to comments by representatives of Incumbent Local Exchange Carriers (ILECs) submitted to the Federal Communications Commission in opposition to the Sprint Petition for Declaratory Ruling dated May 9, 2002 (the "Petition"), concerning the routing and rating of traffic by ILECs.[1] In its Petition, Sprint requests that the Commission reaffirm that ILECs are obligated under the Communications Act to timely load in their networks numbering resources obtained by an interconnecting carrier, and to honor the routing and rating points designated by that carrier, even when the routing and rating points are geographically separate. AAPC strongly supports the relief requested by Sprint because its Petition is unambiguously correct on the law, and because issuance of a declaratory ruling is the appropriate means for resolving its dispute with the ILECs.

Review of the comments submitted by the ILECs clearly confirms the need for the Commission to promptly issue the declaratory ruling requested by Sprint. While AAPC will not itself

[1] The Petition was designated for public comment in CC Docket No. 01-92 by Public Notice DA 02-1740 released July 18, 2002. The Public Notice established August 8, 2002 as the deadline for submitting comments and August 19, 2002 as the deadline for submitting replies.

respond to all of the numerous factually incorrect and otherwise misplaced arguments contained in the ILEC comments, there are a few core points that AAPC believes it would be useful to highlight.

First, the ILEC comments clearly expose the ILEC industry's continuing, blatant and contumacious refusal to even acknowledge, much less comply with, its basic interconnection obligations with respect to CMRS carriers, thereby underscoring the compelling need for the Commission to promptly and decisively rule on the Sprint Petition. One cannot review the ILEC comments without being struck by how thoroughly wrong-headed the ILEC industry's view remains of its interconnection obligations to CMRS carriers, and how obstinately the ILEC industry continues to approach the subject, even in the year 2002. This continuing intransigence, eight years after the Commission's definitive reaffirmation of ILEC interconnection obligations to CMRS carriers in 1994,[2] once again forcefully underscores the fact that an expeditious ruling on Sprint's Petition is necessary in the interests of justice.

Second, the ILEC industry – specifically, but by no means exclusively, the non-Bell component – needs to be emphatically disabused of its fallacious belief that it can lawfully hide behind a so-called "rural exemption" to avoid complying with its interconnection obligations to CMRS carriers. In fact, neither Section 332 of the Act nor Section 20.11 of the Commission's rules is subject to any exemption for rural carriers; nor do other important obligations imposed by the Commission's rules, such as Sections 51.703(b), 51.709(b), 51.100 and 51.305, have a rural exemption insofar as they apply to CMRS interconnection.

[2] *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order)*, 9 FCC Rcd 1411, 1497-1498 (FCC 1994)(the "*CMRS Second Report and Order"*).

In this regard, AAPC points out that the first section of Sprint's argument in its Petition (pp. 15-16) centers on the policies reaffirmed by the Commission under Section 332 of the Act in the *CMRS Second Report and Order,* and codified in Section 20.11 of its rules. Tellingly, however, it is difficult to find even *one* acknowledgement of this source of the Commission's power in the ILEC comments, much less a reasoned analysis of such power. Instead, the ILECs either baldly assert what they (erroneously) believe are their prerogatives without troubling to cite *any* authority for their misbegotten position,[3] or they overtly attempt to hide behind the so-called rural exemption to avoid their obligations to CMRS carriers.[4]

However, Section 332 and the *CMRS Second Report and Order* long antedated the 1996 Telecommunications Act and neither one has an exemption for rural ILECs. Indeed, Section 20.11 has explicitly been applied to rural ILECs notwithstanding the existence of the exemption in Section 251(f)(1)(A) of the Act.[5] Moreover, the Eighth Circuit Court of Appeals has explicitly held that Section 332(c) of the Act, read in combination with Section 2(b), gives the Commission independent authority to promulgate rules governing LEC-CMRS interconnection.[6] Accordingly, it expressly upheld Sections 51.703(b), 51.709(b) and related rules, as applied to LEC-CMRS interconnection, notwithstanding that it otherwise found them to exceed the Commis-

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[3] *See, e.g.,* Comments of The Oklahoma Rural Telephone Companies: Atlas Telephone Company, *et al.,* CC Docket No. 01-92, filed August 8, 2002, at p. 3 (the "Oklahoma Rural Telcos"); Comments of the Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance, CC Docket No. 01-92, dated August 8, 2002 (the "Alliance"). Particularly obnoxious and erroneous is their oft-repeated claim that they have no obligation to deliver CMRS traffic outside of the ILEC's own local exchange. In fact, however, that is *exactly* what Section 51.703(b) of the rules requires.

[4] *See, e.g.,* Comments of John Staurulakis, Inc., CC Docket No. 01-92, dated August 8, 2002, at p. 4, 9-10 ("Staurulakis").

[5] *William G. Bowles, Jr. v. United Telephone Company of Missouri,* 12 FCC Rcd 9840, 9846 (CCB 1997) (rural ILEC's refusal to provide Type 2 interconnection to a paging carrier declared unlawful pursuant to Section 332, despite rural ILEC exemption in Section 251(f)(1)(A)).

[6] *Iowa Utils. Bd. v. FCC,* 120 F.3d 753, 800 & n.21 (8th Cir. 1997)(subsequent history omitted).

sion's jurisdiction under Sections 251 and 252 of the Act. *Id.* Under these circumstances, the ILECs are plainly wrong to deny CMRS carriers the full scope of rights accorded to them by these sections of the rules, and the Commission should explicitly so rule in response to Sprint's Petition.

Third, SBC Communications, Inc. (SBC), fatuously claims that ILECs have the right to determine whether ILECs interconnect directly or indirectly with CMRS carriers for purposes of interchanging land-to-mobile traffic. In fact, and contrary to SBC's argument, Section 20.11 of the rules and the Commission's decisions plainly give that right to *CMRS carrier* and not to the ILEC.

SBC correctly acknowledges (as it must), that CMRS carriers have the unambiguous right to interconnect "indirectly" with non-Bell ILECs, *i.e.*, that Sprint is entitled to interconnect with a non-Bell ILEC indirectly through a Bell-operated tandem, for purposes of terminating mobile-to-land traffic to a non-Bell ILEC.[7] SBC then goes on to make the patently false assertion that the right to interconnect indirectly also "permits each of them [Sprint and Northeast] to determine whether the interconnection will be direct or indirect for traffic they send to the other."[8]

SBC is dead wrong. In point of fact, Section 20.11 of the rules states explicitly that it is the *CMRS carrier* that has the right to determine the type of interconnection it desires to have with an ILEC, *not* the other way around. To argue the contrary, SBC once again simply refuses to acknowledge that the Commission has ever issued its *CMRS Report and Order* or Section 20.11 of its rules.

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[7] Comments of SBC Communications, Inc., CC Docket No. 01-92, dated August 8, 2002, *e.g.*, at p. 4 ("SBC") (acknowledging that the "duty to interconnect indirectly requires Northeast to terminate traffic provided indirectly by from Sprint (*i.e.*, through an intermediary third party such as BellSouth) upon request.")

[8] *Id.*

Moreover, for the rule to be workable at all, there plainly cannot be – and is not -- a distinction in the rule's application between land-to-mobile traffic and mobile-to-land traffic. As but one illustration of this rather obvious point, the rule plainly applies to paging carriers, which generate *only* land-to-mobile traffic over their interconnection arrangements. SBC's interpretation, however, would give the ILEC the sole right to determine the nature of the interconnection arrangements for *all* of the traffic delivered to a paging carrier. While that may be SBC's preferred outcome, Section 20.11 provides exactly to the contrary.[9]

Finally, the ILECs incorrectly contend that the arrangement at issue is either a virtual NXX or a wide area calling arrangement. In fact, the arrangement at issue here is neither one. These erroneous contentions are already fully refuted by the comments of record, and no useful purpose would be served by reiterating those analyses here. Accordingly, the ILECs likewise are in error when they assert that they therefore are not obligated to deliver traffic to CMRS carriers pursuant to the type of arrangement at issue here, and that they can charge whatever the traffic will bear should they nonetheless deign to deliver traffic to CMRS carriers pursuant to such arrangements.

In conclusion, as AAPC stated in its initial comments herein, the law governing the core issues in this case has long been settled, both by Section 20.11 of the Commission's rules (promulgated in 1994) and again by the Telecommunications Act of 1996 (effective February 8, 1996). The comments submitted by the ILECs clearly demonstrate once again that they obstinately refuse to accept that CMRS carriers have any significant interconnection rights at all, much less the right to determine the type of interconnection arrangement they will have with an ILEC.

[9] Staurulakis is the one ILEC representative that does at least acknowledge the existence of Section 20.11 of the rules; but his attempt to avoid its force by arguing economic unreasonableness is patently without merit. Staurulakis at pp. 10-11. Insofar as Staurulakis' position can be discerned, Section 51.703(b) of the rules on its face is a complete refutation of his notion of economic unreasonableness.

Sprint wants to serve the MacClenny exchange in northern Florida via a Type 2 interconnection to BellSouth's tandem office in Jacksonville. The requested Type 2 connection is both technically and economically trivial to accomplish. Both Sections 20.11 and 51.305 of the Commission's rules explicitly give Sprint the right to make that determination. Nonetheless, BellSouth refused for many months to comply with its legal obligations to Sprint and continues to insist that it need not comply with those obligations; and the comments of the ILECs filed in opposition to the Petition make it abundantly clear that they will continue to refuse to comply with those obligations absent prompt and decisive action by this Commission. Accordingly, issuance of the declaratory ruling requested by Sprint is appropriate and necessary to resolve this dispute; and the Commission should grant the requested relief with all deliberate speed.

Respectfully submitted,

AMERICAN ASSOCIATION OF
PAGING CARRIERS

By: s/ Kenneth E. Hardman
Kenneth E. Hardman

Its Attorney

MOIR & HARDMAN
1015 – 18th Street, N.W., Suite 800
Washington, DC 20036-5204
Telephone: (202) 223-3772
Facsimile: (202) 833-2416
kenhardman@worldnet.att.net

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